IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SIXTH DAY OF OCTOBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

AND
THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.22608 OF 2005

Between:

The Principal Secretary to Govt. (Home),

Government of Andhra Pradesh,

Hyderabad, and others.

..... PETITIONERS

AND

Smt.T.Nagamani,

W.PC.1773,

Anantapur District, Anantapur.

....RESPONDENT

THE HON'BLE MR JUSTICE

J.CHELAMESWAR

AND
THE HON'BLE MR JUSTICE

RAMESH RANGANATHAN

WRIT PETITION No.22608 OF 2005

O R D E R

(Per Sri Justice Ramesh Ranganathan)

This writ petition is filed against the order of the A.P. Administrative Tribunal in O.A.No.7467 of 1999, dated 14.09.2004.

The sole respondent in the writ petition filed the aforesaid O.A. questioning the action of the 2nd petitioner herein, (2nd respondent in the O.A.), in rejecting her claim to be assigned seniority either from 1991 or 1994.

The facts, to the extent necessary for this writ petition, are that the sole respondent herein was selected and appointed as a Woman Police Constable in Anantapur District in the year 1982. The 3rd petitioner herein, who is the 3rd respondent in the O.A., conducted a test in the year 1988 for promotion of eligible Police Constables to the posts of Head Constables. The respondent herein appeared for the qualifying test along with other men and women Police Constables. On the basis of the performance in the said examination, the 3rd petitioner herein selected nine Police Constables including the respondent herein. When all the nine Constables were to be sent to undergo a 2½ months Refresher Course Training, a pre-requisite for being considered for promotion as Head Constables, some of the unsuccessful candidates approached the Tribunal filing O.A.No.9857 of 1991 and batch. Initially the Tribunal granted interim orders on 06.03.1991 and subsequently, the aforesaid interim orders were vacated on 29.11.1991. The petitioners herein deputed only eight men Police Constables, to undergo the Refresher Training Course, ignoring the claim of the respondent herein. When the applicant brought this illegality to the notice of the petitioners, she was informed that her case could not be considered at this juncture since there was no vacancy of Woman Head Constable in the unit of appointment. In her application before the Tribunal, the respondent herein referred to the orders issued by the Government, in G.O.Ms.No.595, Home (Pol.C) Department, dated 12.08.1994, sanctioning one post of Woman Head Constable and two posts of Women Sub-Inspectors in Anantapur District and contended that her candidature should have been considered at least from 1994. In the year 1987, the respondent was sponsored for Refresher Course Training and on successful completion thereof, she was appointed as Woman Head Constable.

The grievance of the respondent before the Tribunal was that she ought to have been given promotion as Women Head Constable either in the year 1991 or atleast in the year 1994

since a clear vacancy was available. The Tribunal, on referring to the A.P. Police Subordinate Service Rules, held that there was no specific Rule, which barred women from holding the post of a Civil Head Constable and that the petitioners were at fault in not deputing the applicant for training on the ground that she was a woman though she had qualified in the preliminary examination. The action of the petitioners was held as amounting to hostile discrimination and as opposed to Articles 14 and 16 of the Constitution of India. The Tribunal directed the petitioners herein to promote the respondent as Head Constable and accord her seniority notionally, from the date on which the eight police constables, who were deputed along with her, were appointed as regular Head Constables. The petitioners herein were directed to implement the orders within six weeks from the date of receipt of a copy of that order.

The learned Government Pleader for Services-I submits that on the respondent questioning the illegality of sending eight male Head Constables for Refresher Course Training, the petitioners had informed her in the year 1991 itself that she could not be deputed as there were no vacancies in the posts of Women Head Constables. Learned Government Pleader would submit that since this order was not subjected to challenge before the Tribunal and the order had attained finality, it was not open for the Tribunal at this belated stage to grant the relief as sought for by the respondent herein, more so, in the absence of a specific challenge to the said order.

It is clear from the Rules that women are not precluded from being considered for promotion to the post of Civil Head Constables, and the said post is available both for men and women. The respondent herein was qualified and eligible to hold the promotional post of Head Constable and ought to have been sent for Refresher Course Training along with other male Constables. It is true that the order of rejection passed by the petitioners herein in the year 1991 has not been immediately challenged before the Tribunal by the respondent herein. The Tribunal, however, rightly held that the action of the petitioners herein in not considering the case of the respondent for promotion to the post of Head Constables, on the basis of her gender, amounted to hostile discrimination and was in violation of Articles 14 and 16 of the Constitution of India.

While the contention of the learned Government Pleader cannot be said to be without merit, we are of the view that the order of the Tribunal has not resulted in manifest

injustice necessitating interference under Article 226 of the Constitution of India. It is well settled that the issuance of a Writ of Certiorari is discretionary in nature and such a writ is not to be issued as a matter of course.

We see no reason to exercise our discretion in favour of the petitioners herein, more so, as the relief granted by the Tribunal to the respondent herein is in accordance with the Rules.

The Writ Petition is accordingly dismissed at the admission stage itself. No costs.

JUSTICE J.CHELAMESWAR

JUSTICE RAMESH RANGANATHAN

26TH OCTOBER, 2005

PGS

THE HON'BLE MR JUSTICE

J.CHELAMESWAR

AND
THE HON'BLE MR JUSTICE

RAMESH RANGANATHAN

WRIT PETITION No.22608 OF 2005

(Per Sri Justice Ramesh Ranganathan)

26th OCTOBER, 2005